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16 *Attorneys for Plaintiff State of Nevada
17 ex rel. its Department of Transportation*

18 **UNITED STATES DISTRICT COURT**

19 **DISTRICT OF NEVADA**

20 THE STATE OF NEVADA, on relation of its
21 Department of Transportation,

22 Plaintiff,
23 v.

24 UNITED STATES DEPARTMENT OF THE
25 TREASURY – INTERNAL REVENUE
26 SERVICE; DARRELL E. JACKSON, a
27 married man; THOMAS M. STRAWN, JR., a
married man; ANDREW S. LEVY, a married
man; DAVIDSON INVESTMENTS LIMITED
PARTNERSHIP, a Nevada limited partnership;
JOHN W. BOYER, a married man; MICHAEL
ALEXANDER, Trustee of the MICHAEL
ALEXANDER LIVING TRUST; NEVADA
TITLE COMPANY, a Nevada corporation; L.
S. ENTERPRISES, INC., a Nevada corporation
d/b/a American Commonwealth Mortgage Co.;
EAGLEMARK SAVINGS BANK, a Nevada
corporation; STATE OF NEVADA,
DEPARTMENT OF EMPLOYMENT,
TRAINING & REHABILITATION,
EMPLOYMENT SECURITY DIVISION;
CITY OF LAS VEGAS; CLARK COUNTY, a
political subdivision of the State of Nevada; and
all other persons unknown claiming any right,
title, estate, lien or interest in the real property
described in the Complaint,

28 Defendants.

CASE NO.: 2:16-cv-00665-APG-GWF

ORDER FOR OCCUPANCY

1 Plaintiff State of Nevada – Department of Transportation (“NDOT”) filed a Complaint in
2 Eminent Domain in the Eighth Judicial District Court on February 16, 2016. This matter was
3 then removed to this Court by Defendant United States Department of the Treasury – Internal
4 Revenue Service pursuant to 28 U.S.C. § 1442(a)(1) on March 25, 2016. Prior to removal, the
5 State of Nevada filed a Motion for Order for Immediate Occupancy Pending Entry of Judgment
6 (“Motion”) in the state court. The Motion seeks an order permitting the State to occupy the
7 premises sought to be condemned (“Subject Property”), pending the entry of judgment, and to do
8 such work thereon as may be required for the fee or property rights sought, according to its
9 nature. No opposition to the Motion was filed.

10 Plaintiff’s Motion was heard by this Court on the 29th day of March, 2016. At the
11 hearing, the NDOT appeared and was represented by Senior Deputy Attorney General Scott
12 Davis, Defendant U.S. Department of the Treasury was represented by Assistant United States
13 Attorney Mark Woolf, and Defendant Andrew Levy appeared and was represented by Amy
14 Sugden, Esq.

15 Having reviewed the Motion and the affidavit attached thereto, the Court finds from the
16 evidence presented in NDOT’s Motion, and pursuant to Nev. Rev. Stat. 37.100(4), that the
17 Subject Property is being condemned for a valid public use; and, further, that there are valid
18 reasons for a speedy occupation, that NDOT is entitled to occupation of the premises sought to
19 be condemned pending judgment, and good cause exists for this Order. Good cause appearing
20 therefor, it is hereby ORDERED:

21 1. That upon the deposit of funds described below the State of Nevada, Department
22 of Transportation be granted the right to possess and occupy the property and property rights
23 described in the Complaint and more particularly described as follows:

24 The property sought to be condemned for said highway improvement is designated by the
25 NEVADA DEPARTMENT OF TRANSPORTATION as Parcel Nos. I-015-CL-041.410 and I-
26 015-CL-041.410TE, and is described as follows:

27 Said real property situate, lying and being in the City of Las Vegas, County of Clark, State
28 of Nevada, and more particularly described as being portions of the SW 1/4 of the NE 1/4 of

1 Section 4, T. 21 S., R. 61 E., M.D.M., and more fully described by metes and bounds as follows,
2 to wit:

3 PARCEL NO. I-015-CL-041.410 to be acquired fee simple

4 COMMENCING at the section corner common to Sections 32, 4
5 and 5, a BRASS CAP IN SURVEY WELL STAMPED "32/5/4 PLS5094",
6 shown and delineated as a FD. WELL MON. #5094 on that certain
7 RECORD OF SURVEY FOR JOHN W. BANKS AND MARJORIE N.
8 BANKS filed for record on June 29, 1995, in Book 950629, Instrument
9 No. 01574, File 77, Page 35, in Official Records Clark County, Nevada;
10 thence S. $0^{\circ}55'21''$ W, along the west line of said Section 4, a distance of
11 2,662.39 feet (Record S. $0^{\circ}11'11''$ W. – 2,662.33 feet per said RECORD
12 OF SURVEY), to the 1/4 corner common to Sections 4 and 5, being a
13 FOUND 0.10' ALUM CAP FLUSH WITH OIL UNREADABLE, shown
14 and delineated as a FD. R/AC on said RECORD OF SURVEY; thence
15 N. $67^{\circ}45'05''$ E. a distance of 3,130.55 feet to the POINT OF
16 BEGINNING; said point of beginning being on the left or northwesterly
17 right-of-way line of IR-15, 321.18 feet left of and at right angles to
18 Highway Engineer's Station "Le" 782+65.63 P.O.T; thence along said
19 northwesterly right-of-way line the following three (3) courses and
20 distances:
21
22 1. N. $25^{\circ}10'11''$ E. – 79.27 feet;
23 2. N. $2^{\circ}26'05''$ E. – 93.39 feet;
24 3. N. $89^{\circ}35'26''$ E. – 156.82 feet, the first 28.29 feet being
25 along said northwesterly right-of-way line;
26 thence S. $49^{\circ}47'12''$ W. a distance of 109.76 feet to a non-tangent curve;
27 thence from a tangent which bears S. $49^{\circ}47'38''$ W., curving to the left with
28 a radius of 536.00 feet, through an angle of $13^{\circ}54'15''$, an arc distance of

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1 130.07 feet; thence S. $89^{\circ}35'24''$ W. a distance of 22.45 feet to the point of
2 beginning; said parcel contains an area of 12,137 square feet.

3 PARCEL NO. I-015-CL-041.410TE to be acquired as a temporary easement for
4 construction purposes for a four-year period commencing on the date of occupancy

5 COMMENCING at the section corner common to Sections 32, 4
6 and 5, a FOUND 2" BRASS CAP IN MONUMENT WELL STAMPED
7 "32 5|4 PLS5094" shown and delineated as a FOUND WELL MON.
8 #5094 on that certain Record of Survey for John W. Banks & Marjorie N.
9 Banks, filed for record on June 29, 1995, in Book 950629, Instrument No.
10 01574, File 77, Page 35, in Official Records Clark County, Nevada; thence
11 S. $0^{\circ}55'21''$ W, along the west line of said Section 4, a distance of 2,662.39
12 feet (Record S. $0^{\circ}11'11''$ W. – 2,662.33 feet per said Record of Survey), to
13 the 1/4 corner common to Sections 4 and 5, a FOUND 0.10' ALUM CAP
14 FLUSH WITH OIL UNREADABLE, shown and delineated as a FOUND
15 REBAR IN AC on said Record of Survey; thence N. $67^{\circ}45'05''$ E. a
16 distance of 3,130.55 feet to the POINT OF BEGINNING; said point of
17 beginning being a point on the left or northwesterly right-of-way line of
18 IR-15, 321.18 feet left of and at right angles to Highway Engineer's Station
19 "Le" 782+65.63 P.O.T; thence along the following four (4) courses and
20 distances:
21 1. S. $89^{\circ}35'24''$ W. – 11.09 feet;
22 2. N. $25^{\circ}10'11''$ E. – 82.04 feet;
23 3. N. $2^{\circ}26'05''$ E. – 90.88 feet;
24 4. N. $89^{\circ}35'26''$ E. - 10.01 feet to said northwesterly right-of-way
25 line;

26 thence S. $2^{\circ}26'05''$ W., along said right-of-way line, a distance of
27 93.39 feet; thence S. $25^{\circ}10'11''$ W., along said right-of-way line, a distance

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1 of 79.27 feet to the point of beginning; said parcel contains an area of
2 1,728 square feet (0.04 acres).

3 The Basis of Bearing for these descriptions is the NEVADA STATE PLANE
4 COORDINATE SYSTEM, NAD 83/94 DATUM, East Zone as determined by the State of
5 Nevada, Department of Transportation.

6 2. That NDOT will, not later than 15 days from the date of this Order, deposit with
7 the Clerk of the Court, the sum of ONE HUNDRED THOUSAND FIVE AND NO/100
8 DOLLARS (\$100,005.00) into the Court's interest bearing account for said Parcel Nos. I-015-
9 CL-041.410 and I-015-CL-041.410TE.

10 3. That acceptance by any of the Defendants of this sum or any part thereof to be
11 deposited by NDOT is without prejudice to the right of any of the Defendants to contest the
12 amount of compensation to be finally awarded to them in the above-entitled action, but the
13 receipt by Defendants of said money deposited with the Clerk of the Court shall constitute a
14 waiver of all defenses except those relating to the amount of such compensation.

15 IT IS FURTHER ORDERED that pursuant to Nev. Rev. Stat. 37.100(8), and pending this
16 action, Defendants herein be restrained and enjoined, and they are hereby restrained and
17 enjoined, from hindering or interfering with the performance of the work by Plaintiff in and upon
18 the property and property rights of Defendants described in the Verified Complaint as required
19 for the construction of said highway project.

20 IT IS FURTHER ORDERED that a copy of this Order be served by the Plaintiff upon the
21 above-named Defendants.

22 IT IS SO ORDERED.

23 
24 UNITED STATES DISTRICT JUDGE
25 Dated: April 4, 2016.

26 Submitted by:
27 ADAM PAUL LAXALT
28 Nevada Attorney General
Dennis V. Gallagher
Chief Deputy Attorney General
Attorneys for Plaintiff State of Nevada
ex rel. its Department of Transportation